

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.331 of 2000

Narendra @ Naresh @ Narya

Bhaskar Jadhav .. Appellant

versus

The State of Maharashtra .. Respondent

...

Mr.Abhay Kumar Apte for the appellant.

Mr.F.R. Shaikh, APP for the state.

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.636 of 2000

Pramod @ Panya Hari Pacharane .. Appellant

versus

The State of Maharashtra .. Respondent

...

Mr.B.G.Tangsali for the appellant.

Mr.F.R. Shaikh, APP for the state.

CORAM : Smt.Ranjana Desai &

D.G. KARNIK, JJ

DATED : 18th April 2006.

ORAL JUDGEMENT : (Per Smt.Ranjana Desai, J)

1. Criminal Appeal No.331 of 2000 is filed by Naresh Bhaskar Jadhav @ Narya, original accused 2 (for convenience 'A2') and Criminal Appeal no.636 of 2000 is filed by Pramod Pacharane @ Pamyra, original accused 1 (for convenience 'A1'). Both A1 and A2 along with five others i.e. accused 3, 4, 5, 6 & 7 (A3, A4, A5, A6 & A7 for convenience) were tried in the Sessions Court at Kalyan in Sessions Case no.1302 of 1996 for offences punishable u/s.147, 148, 149, 302 and 307 of the IPC and in the alternative u/s.302, 307 r/w 34 of the IPC. They were also charged u/s.27(2) of the Indian Arms Act.

2. It would be advantageous to give the gist

of the prosecution case. One Satyawar Kondu Mhatre is the resident of Gauripada, Kalyan. He is residing there along with members of his family. His cousin Hainder Sardya Mhatre was residing nearby the house of Satyawar. Both were working in the Maharashtra State Electricity Board. About four years prior to 22.9.95 i.e. the date of incident, Satyawar and Hainder had assaulted A1 to A4 and A7. Admittedly, there was a rivalry between the accused on one hand and Satyawar and Hainder on the other hand.

3. On 22.9.95, Satyawar and Hainder left their home at about 8.00 a.m. Hainder was driving a scooter and Satyawar was on the pillion seat. At about 8.15 a.m, they reached Milind Nagar. While they were passing a hair cutting saloon, they heard cries as "dhara dhara". Satyawar looked behind. He noticed that A3, A4 and A7 armed with sticks and iron rods were chasing them. When they were near Buddha Vihar A1 and A2 and two others came from the front side. A2 was armed with sword, A1 was holding a revolver and unknown persons were holding daggers. A2 dealt blow of sword on the head of Hainder. Satyawar and Hainder fell down on the road.

According to the prosecution, A1 twice fired revolver aiming at Satyawar and Hander. However, the bullets missed the targets. Rest of the accused started attacking Hander with dagger, sticks and iron rod. As Satyawar was trying to stand up A2 dealt a sword blow on his person. Satyawar took it on the palm of his right hand. Satyawar received bleeding injuries. Thereafter, the accused ran away. Hander was shifted to the hospital in the jeep of Yeshwant Bhoir brought by Satyawar. The medical officer examined him and declared him dead. Satyawar was examined and admitted in Shridevi hospital. The police visited the hospital and recorded the complaint of Satyawar which is at Exhibit 65. This complaint was treated as FIR. Investigation was started on the basis of this complaint. After completion of the investigation, the accused came to be charged as aforesaid.

4. In support of its case, the prosecution examined as many as 15 witnesses. The star witness of the prosecution is PW 1 Satyawar who was injured in the occurrence. The accused pleaded not guilty to the charge. According to the accused, they were falsely implicated.

5. After perusing the evidence on record, the learned Sessions Judge acquitted A3 to A7 of the offences punishable u/s.147, 148, 149, 302 and 307 of the IPC. He acquitted A1 and A2 of the offence punishable u/s.27(2) of the Indian Arms Act and of the offences punishable u/s.147, 148 and 149 of the IPC. He convicted A1 and A2 u/s.302 r/w 34 of the IPC and sentenced them to suffer imprisonment for life. A1 and A2 were also convicted of the offences punishable u/s.307 r/w 34 of the IPC and sentenced to suffer SI for 7 years each and to pay a fine of Rs.500/- each in default to undergo SI for two months. The substantive sentences were to run concurrently. This judgement is under challenge before us.

6. We have heard at some length, Mr.Abhay Kumar Apte, the learned counsel appearing for A2 and Mr.Tangsali, the learned counsel appearing for A1. We have also heard Mr.Shaikh, learned APP for the State. With the assistance of the learned counsel, we have gone through the evidence on record.

7. Mr.Tangsali, the learned counsel for A1 contended that conviction of A1 is totally unsustainable. He contended that it is alleged that A1 had used a revolver. However revolver is not recovered. There are no firearm injuries on the deceased or PW 1 Satyawar. Assuming that the prosecution story that bullets did not hit the target is true atleast the empties or cartridges ought to have been found at the scene of offence particularly when PW 1 Satyawar says that A1 fired twice. Mr.Tangsali pointed out that in the FIR PW 1 has stated that he was injured by bullets of a revolver. When he was confronted with this in the cross-examination he has stated that this statement in the FIR is erroneous. According to him, it is a mistake. Mr.Tangsali contended that it is clear from this that PW 1 Satyawar has created a false case against the accused. According to him PW 1 who belongs to the deceased's camp has tried to involve A1 because there was enmity between the deceased and A1.

8. Mr.Tangsali contended that weapons of assault allegedly discovered at the instance of A1

are not the weapons which according to the prosecution were used by him and therefore, this alleged discovery cannot be used against him. Mr.Tangsali further contended that the alleged discovery is a fabricated discovery. PW 10 Pawar who is a pancha to the discovery panchnama has not identified A1 in the court. Therefore, this discovery is shrouded in suspicion. Mr.Tangsali contended that assuming this discovery is proved, in the absence of any other corroborative evidence to lend assurance to the prosecution case conviction cannot be based on it.

9. Mr.Tangsali further contended that even seizure of blood stained clothes from the person of the accused on 25.9.95 is doubtful. He submitted that it is inconceivable that the accused would be found wearing the same clothes 4 to 5 days after the incident. He submitted that the record indicates that after the incident A1 was staying with his in-laws at Padgha Ulhasnagar. It is impossible that A1 & A2 would not change their bloodstained clothes when they were staying with in-laws of A1. According to Mr.Tangsali the alleged seizure of clothes must therefore, be rejected.

10. Mr.Tangsali also pointed out that A1 has received injuries which is evident from his injury certificate which is on record. Mr.Tangsali contended that the prosecution has failed to explain the injuries sustained by A1 and therefore, adverse inference needs to be drawn against it. In this connection, he relied on the judgement of the Supreme Court in Laxmi Singh & Others Vs. State of Bihar AIR 1976 SC 2263. Mr.Tangsali contended that there is no credible evidence on record establishing the guilt of A1 and therefore, his conviction and sentence should be set aside.

11. Mr.Apte learned counsel appearing for A2 adopted and reiterated the submissions of Mr.Tangsali. He contended that the trial court has acquitted the other accused. Evidence of PW 1 Satyawar is not believed to that extent. There is therefore no guarantee that Satyawar is telling the truth when he is deposing about the involvement of the convicted accused. It is not safe to rely on his evidence. Mr.Apte contended that discovery of weapons at the instance of A1 cannot be used against A2. That evidence must therefore be discarded.

Mr.Apte submitted that there is thus absence of credible evidence against A2 and hence A2 should be acquitted.

12. Though the prosecution has examined three eye witnesses, the learned Sessions Judge has not placed any reliance on two of them. They are PW 3 Raghunath Mhatre and PW 4 Ganesh Mhatre. We will have to therefore keep this evidence out of consideration as we are of the opinion that the learned Sessions Judge has rightly not placed reliance on their evidence. The prosecution case therefore basically rests on the evidence of PW 1 Satyawar who was injured in the incident in question. Before we go to PW 1 Satyawar's evidence, it is necessary to mention that there is no dispute about the fact that the relations between the accused and the deceased were strained. Pw 1 Satyawar and deceased Hainder had broken both the legs of A1 and hence, they were tried in the Sessions Court for that offence. There were also several other cases registered against the accused as well as PW 1 Satyawar and deceased Hainder. The learned Judge has therefore, rightly held that the prosecution has proved motive.

13. PW 1 Satyawan has stated that he and the deceased were proceeding towards their office as usual on 22.9.95. They left their house at about 8.10 a.m. The deceased was a pillion rider. They came to the area of Milind Nagar. They passed a hair cutting saloon and that time, he heard cries from behind. He looked behind and noticed A3, A4 and A7. A3 and A7 were armed with sticks and A4 was armed with iron bar. The accused were chasing them. He asked the deceased to increase the speed of the scooter but when they reached Buddha Vihar, he noticed A1 and A2 along with two unknown persons approaching from front side. A2 was armed with sword and A1 was holding revolver. Two unknown persons were holding daggers. A2 attacked on the middle part of the head of the deceased with the sword. Both of them fell down from the scooter. According to this witness as he was trying to stand up, A2 dealt a blow of sword on his person. It fell on the palm of his right hand. Thereafter, A1 fired the revolver twice towards him and the deceased. However, the bullets did not hit them. According to this witness, he had sustained bleeding injury on his hand between thumb and first finger. He was

trying to overpower A1 and A2. At that time, two unknown persons attacked him with dagger and inflicted blow of dagger on his left elbow and left armpit anterior. At that time, A3, A4 and A7 reached the spot and they also started assaulting them and in that scuffle, A1 was hit with a dagger on his left cheek. This witness then ran from the scene of offence. According to him, he went to the rationing shop of Shaliq Mhatre. Shaliq Mhatre was present in the shop. He informed him about the incident and asked him to report the matter in the village. He then went to the house of Rohidas Mhatre. He took Rohidas to the scene of offence. At the scene of offence, he noticed PW 3 Raghunath Mhatre, PW 4 Ganesh Mhatre and Maruti Mhatre. Thereafter by an auto rickshaw, he went to Purnima police outpost along with Rohidas. One police constable was on duty at the police outpost. He told him about the incident and requested him to visit the spot. Accordingly, the police accompanied him to the spot. On the way, they visited the office of PW 5 Yeshwant Bhoir. From there the constable rang Mahatma Phule Chowk police station and reported the matter. Then they came to the scene of offence in the jeep of Yeshwant Bhoir.

They shifted the deceased into the jeep. Then he along with PW 5 Yeshwant Bhoir, Rohidas Mhatre, PW 4 Ganesh Mhatre and Maruti Mhatre proceeded to K.M.C. Hospital, Kalyan. The medical officer examined the injured and declared him dead. The medical officer treated PW 1 Satyawar. Thereafter, he was admitted in Sridevi Hospital, Kalyan but as X-ray machine was not available there, he was sent to Gurudev Hospital for X-ray. After his X-rays were taken, he again went to Sridevi Hospital. The police visited the hospital, recorded his statement which is at Exhibit 65. The said statement was treated as FIR.

14. The evidence of this witness was assailed by the learned counsel Shri Apte and Shri Tangsali basically on the ground that though the witness says that after the incident he went to the shop of Shaliq Mhatre; that he met Raghunath Mhatre, Sitaram Mhatre, Ganesh Mhatre according to him he did not tell the names of assailants to them. According to him, he also went to the office of Yeshwant Bhoir. He did not inform the names even to Yeshwant Bhoir. At the Purnima police outpost, he met one police constable. According to him, he reported the incident to him and requested him to

visit the scene of offence. But surprisingly he did not give the names of the assailants even to the police constable. It is his case that his statement came to be recorded at the hospital by the police at 12 noon on the same day. The learned counsel contended that this conduct is unnatural and makes the testimony of this witness suspect. If he had seen the incident, his first reaction would have been to inform the names of his assailants to people whom he admittedly met after the incident and also to the police constable whom he requested to visit the scene of offence. If the incident had taken place at about 8.15 am in the morning, four hours delay in lodging the FIR according to the learned counsel is fatal to the prosecution. It was urged that obviously four hours time was taken by the police to concoct a false case against the accused. It was pointed out that even the learned Sessions Judge has partly disbelieved this witness. The learned Sessions Judge has acquitted all the other accused though this witness has in his evidence tried to involve them.

15. It is true that since all the other accused have been acquitted what PW 1 Satyawan has stated

has not been accepted by the learned Sessions Judge in its entirety. The question is what is the effect of this on the prosecution case so far as the appellants are concerned. It is well settled that testimony of a witness can be partly believed. Merely because some of the accused are acquitted and to that extent evidence of a prosecution witness is found unacceptable, the testimony of the witness need not be discarded in toto. If it is found that so far as the other accused are concerned, the witness is telling the truth, reliance can be placed on that part of his evidence. If the court finds that the substratum of the prosecution case has not given way because of some inconsistencies in the evidence of such witness, other accused can be convicted on the basis of his evidence. It is only if the evidence of a witness contains glaring discrepancies can he be described as a wholly unreliable witness.

16. PW 1 Satyawan was a pillion rider of the scooter driven by the deceased. He is an injured witness. Therefore, his presence at the scene of offence can hardly be doubted. PW 7 Dr. A. Neeraja had examined PW 1 Satyawan at the KMC

hospital, Kalyan. She found seven external injuries on his person. She has stated in her evidence that the injuries suffered by Satyawar could be caused by hard and cutting object. She has described the injuries suffered by PW 1 Satyawar as follows :-

1. Incised wound over left lateral side of the elbow joint measuring around 5x3x2 cms fresh bleeding was present
2. Incised wound over left axilla just 3 cms below arm bit measuring around 3 cm x 1 1/2 cm x 1/2 x cm fresh bleeding was present.
3. Abrasion over right face of thumb measuring around 4 cm x 1/8 cm x 1/10 cm.
4. Incised wound over posterior part of the left shoulder measuring around 2x1x1/8 cms fresh bleeding was present.
5. Abrasion over back of the scapular

area right side measuring around 6 cm x 1/10 cm x 1/8 cm and fresh bleeding was present.

6. Abrasion over back over lumbar region around 7 cm x 1/8 cm x 1/10cm and fresh bleeding was present.

7. Abrasion was over front of right thigh 6 cms below hip joint measuring around 8 cms x 4 cms x 2cms.

17. It is true that normally PW 1 Satyawar was expected to disclose the incident to all the people he met immediately after the incident and also to the police constable at the Purnima outpost but non disclosure of the incident to these people in the facts of this case, in our opinion, is not fatal to the prosecution case. There is an admitted enmity between the two sides. It is possible that PW 1 Satyawar was frightened and had no courage to disclose the incident to others. PW 6 Vilas Kathore police constable who was on duty at the Poornima police outpost has stated that PW 1

Satyawan was in a frightened state when he came to the police outpost. It appears to us that he was so traumatised by the ghastly incident that he ran from one person to other, and then went to the scene of offence in a jeep, shifted the deceased to the hospital and got himself admitted in the hospital. Injuries quoted in the preceding paragraph make it evidence that he must be in pain and distress. Being an injured person, his anxiety must have also been to get himself treated by a doctor. He must be pre-occupied by the need to get medical help for himself. He also ensured that the deceased was taken to K.M.C hospital. The deceased was declared dead. The Medical Officer at the K.M.C hospital treated PW 1 Satyawan and thereafter he was admitted in Sridevi hospital at Kalyan. As X-ray machine was not available, he was taken to Gurudev hospital. At Gurudev hospital, his X-rays were taken and then he was taken back to Sridevi hospital and then at Sridevi hospital his statement came to be recorded. Considering the circumstance in which he was placed if he had not disclosed the names of the assailants to the people that cannot be taken against him. It appears that initially even the police concentrated on giving medical help

to him. He was shifted from one hospital to another and it is only after his X-rays were taken that he was taken back to Sridevi hospital and there his FIR was registered. This sequence of events in our opinion also explains why there is some delay in recording the FIR. In the facts of this case, we do not think that the delay of about 4 hours in recording the FIR suggests that police were in the meantime trying to give shape to the prosecution story. These submissions are therefore rejected.

18. It was argued by Mr.Apte that in the FIR lodged by PW 1 Satyawar, there is an erasure and name of A2 appears to have been added subsequently. We find no substance in this submission. It is true that there is some erasure but from that we cannot conclude that A2's name has been subsequently added because even prior to the alleged erasure, PW 1 Satyawar has referred to the involvement of A2. Mr.Apte is therefore not right when he says that A2's name has been subsequently inserted in the FIR. So far as involvement of A2 is concerned, we find no difficulty in accepting the evidence of PW 1 Satyawar. We however feel

that the prosecution has not established its case against A1. We shall give our reasons for this conclusion

19. Seizure of clothes is sought to be proved through the evidence of pancha PW 10 Lalchand Pawar and investigating officer PW 15 Dy.S.P. Kanade. The relevant panchnama in this connection is the arrest panchnama Ex.88. According to the prosecution A1 & A2 were arrested at village Padgha in Ulhasnagar on 25.9.95. On their arrest, clothes on their person were seized. Panchnama Ex.88 was drawn. The clothes were blood stained. The Chemical Analyser's report states that the blood was human. Whether this seizure can be relied upon or not needs to be examined. The incident had taken place on 22.9.95. A1 & A2 were arrested on 25.9.95. The question is whether they would move around with the same blood stained clothes on their person for three days. Ex.115 is a letter sent by Police Inspector Crime Branch, Thane to Sr.PI Mahatma Phule Chowk. This letter states that information was received by the police that A1 & A2 are residing with the in-laws of A1 at Padgha in Ulhasnagar. Acting on this information the police

apprehended them in Padgha. If A1 & A2 were staying with the in-laws of A1, surely they would change their blood stained clothes. It is inconceivable that A1 & A2 would move around with blood stained clothes on their person so that they could be easily arrested by the police. This seizure is therefore doubtful. We find it difficult to place reliance on it.

20. The prosecution has also relied on discovery of weapons at the instance of A1. In this connection evidence of PW 15 Dy.S.P. Kanade and PW 10 Lalchand Pawar is material. PW 15 Dy.S.P. Kanade has stated that on 25.9.95 while in police custody A1 made a voluntary statement that he will show the weapons of assault hidden by him at Kalyan. Accordingly, he led the police and the panchas to a hut near the railway line at Kalyan Syndicate. From the roof of the hut, he took out one knife and one sword. They were stained with blood. The memorandum and panchnama in this connection are at Ex.90 and 89 respectively. The Chemical Analyser's report states that on these weapons there was human blood of 'O' group. Blood group of the deceased is 'O'. Blood group of A1

and A2 is 'B' and that of PW 1 Satyawar is 'A'.

21. So far as this discovery is concerned PW 10 Lalchand Pawar has no doubt supported the prosecution, but in the court he could not identify A1. But assuming that by placing reliance on the evidence of PW 15 Dy.S.P. Kanade, this discovery can be held to be proved, it is not the case of the prosecution that A1 used any of the weapons allegedly discovered by him. So appreciable value of this discovery gets reduced. If this discovery is held to be proved, it may not be a totally innocuous circumstance so far as A1 is concerned. But by itself it will not be sufficient to book A1. There must be sufficient other evidence on record to indicate his involvement which in our opinion is wholly lacking in this case. This discovery does not further the prosecution case against A1.

22. So far as A2 is concerned discovery of weapon at the instance of A1 can never be used against him. This position is well settled in law. In Mathur Dhana Vs. State AIR 1956 Bombay 393, the appellant therein made a statement in the presence of the panchas that he and his brothers had buried

the dead body and that he would point it out and the dead body was discovered from his field. This court held that so far as the appellant involved his brothers also, the statement would be inadmissible. But, so far as he involved himself, the statement would be clearly admissible.

23. Similar view is taken by this court in *Nabi Mohamad Vs. State of Maharashtra* 1979 BCR 680. While considering similar question this court observed that it is implicit in the provisions of section 24, 25 and 26 of the Indian Evidence Act that what is permitted to be proved having the information received from the accused pursuant to which discovery is made, is intended to be proved against such accused and not against non-informant co-accused. Relevant observations of this court are as under :-

"We are aware that in the body of the test of section 27 the words "so much of such information, whether it amounts to confession or not "have been enacted. The phraseology so employed merely shows that such information so given may

amount to confession in that it may be an admission of an incriminating nature or it may be merely in information without implications or involvement of criminal character. On the principles evident herein, such incriminating information could effectively be used only against the maker, as admissible evidence having assurance of its truth coming forth from the facts discovered pursuant thereto. With regard to co-accused, nothing of the kind is available and it would not be safe to use such information involving the co-accused, though such a statement may contain incriminating information with regard to the maker thereof. In fact, such an information even if proved would not strictly be evidence against the non maker, for the maker is not a witness nor can be subjected to cross-examination. We must hasten to add that this all relates to informatory statement and not to "the facts" so discovered. Like any other fact being

available and established as proved, its use would depend on the other evidence that may connect co-accused with such fact though they may not be linked with it by reason of the information that led to its discovery. Against the maker both the information and the fact discovered would be available for drawing inferences while against others the other evidence will have to be produced to connect them with such a fact.

24. In the light of above observation it must be held that once the information leading to the discovery of fact is established the inferences that arise from it can be an incriminating circumstance against the maker and not against the co-accused. Information leading to discovery of fact can never be used against the co-accused. So far as fact discovered is concerned, other evidence will have to be produced to connect the co-accused with it. Like any other fact being available and established as proved, it's use would depend on the other evidence

that may connect co-accused with such fact though the co-accused may not be linked with it by reason of the information that led to its discovery. In this case, undoubtedly the Chemical Analyser's report states that the weapons were found stained with human blood of 'O' group and that is the blood group of the deceased. PW 1 Satyawar has stated that A2 had a sword in his hand and he attacked him and the deceased with it. Therefore, if the discovery is held to be proved though information leading to the discovery cannot be proved against A2, it needs to be seen whether sword could be independently connected with A2. Though in a given case, it is possible to do so, we are unable to come to a conclusion that in this case such an exercise is possible. We find it unsafe to hold that the same sword could be connected with A2 on the basis of Chemical Analyser's report and on the basis of evidence of PW 1 Satyawar.

25. Another point which was canvassed by Mr. Tangsali is that injuries on A1 have not been explained by the prosecution. PW 13 Dr. Anandrao Kamble attached to Primary Health centre at Padgha had examined A1 on 22.9.95. The injury certificate

Ex.100 is on record. Dr.Kamble noticed three injuries on A1. They are as under :-

1. Incised injury over H cheek flap was removed from upward downside 6 x 3 cms 9 stitches taken.
2. Incised wound over H index finger and in between index and middle finger 8 x 1/2 x 1/2 cms dorsally.
3. Incised wound over the hand dorsally behind ring and middle finger 2 1/2 x 1/2 cms.

It is not possible to hold that the prosecution has not given any explanation about this injury. PW 1 Satyawar in his evidence has stated that there was a scuffle and in the scuffle a dagger hit on the left cheek of A1. If there was a scuffle, it is possible for A1 to receive injuries during the scuffle. In the circumstances, judgement of the Supreme Court in Laxmi Singh's case (Supra) is not applicable to this case.

26. In the ultimate analysis we are of the opinion that once seizure of clothes and discovery of weapons at the instance of A1 are held to be circumstances of no consequence then A1 must get benefit of doubt and he must be acquitted because though PW 1 has said that he had a revolver and he fired twice, the revolver was not recovered. The empties and cartridges were also not recovered. Nobody has suffered any firearm injury. A doubt is therefore, created about his role. In our opinion, therefore conviction and sentence of A1 must be set aside.

27. So far as A2 is concerned, we have already noted that evidence of the injured witness PW 1 Satyawar is sufficient to prove his involvement. PW 1 Satyawar has said that A2 was armed with a sword. He inflicted a sword blow on the middle part of the head of the deceased. A2 also inflicted sword on PW 1 Satyawar's person. It fell on his palm. Injury certificate of PW 1 Satyawar bears out this case. Post mortem notes show that the deceased had

suffered injury on his head. It is described as "Incised wound - Parietal bone - 7 1/2 x 1 x braindeep Horizontal, margin clean cut. PW 2 Dr.Pramod Satpute who had done the post mortem has said that this injury is sufficient to cause death and it is possible by a sword. The incident had taken place at about 8.30 a.m. in the morning. Therefore, there is no possibility of a mistaken identity. There is no reason why PW 1 Satyawan would involve an innocent person. It is well settled that conviction can rest on the evidence of a sole eye witness if it is found reliable. We therefore find no difficulty in upholding the conviction of A2. Hence, the following order :-

O R D E R

1. Accused 1 Pramod @ Pamyra Hari Pacharane is acquitted of the offence u/s.302 r/w 34 of the IPC and sentence of life imprisonment imposed on him is set aside. A1 is also acquitted of the offence punishable u/s.307 r/w 34 of the IPC. His sentence on that count is quashed and set aside. Sentence of fine

is also quashed and set aside.

2. So far as accused 2 Narendra @ Naresh @ Narya Bhaskar Jadhav is concerned, his conviction and sentence u/s.302 r/w 34 is confirmed. His conviction u/s.307 r/w 34 is also confirmed.

3. Appeal no.636 of 2000 is therefore allowed and appeal no.331 of 2000 is dismissed.

(Smt.Ranjana Desai, J)

(D.G. Karnik, J)